

RESOLUTION NO. _____, SERIES 2008

A RESOLUTION OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AUTHORIZING THE EXECUTION OF A MEMORANDUM OF AGREEMENT BY AND BETWEEN THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AND UNIVERSITY OF LOUISVILLE FOUNDATION, INC. RELATING TO AN INDUSTRIAL BUILDING PROJECT UNDERTAKING THE ISSUANCE OF INDUSTRIAL BUILDING REVENUE BONDS AT THE APPROPRIATE TIME TO FINANCE THE PROJECT; AND TAKING OTHER PRELIMINARY ACTION.

Sponsored By: Councilman David Tandy

WHEREAS, University of Louisville Foundation, Inc. (the "Company"), is a Kentucky non-profit corporation duly organized and in good standing under the laws of the Commonwealth of Kentucky; and

WHEREAS, the Company proposes to undertake an industrial building project, within the meaning of the Industrial Buildings for Cities and Counties Act, as amended, Sections 103.202 to 103.285 of the Kentucky Revised Statutes (the "Act") consisting of (i) the financing for the development and construction of a contemporary art museum within an approximately 20,000 square foot condominium unit as a component of Museum Plaza, a mixed-use project to be constructed consisting of full service hotel, office space, residential condominiums, retail outlets and parking garage with city plaza and park in downtown Louisville, Kentucky (the "project"); (ii) the reimbursement to the Company for costs already incurred and paid with respect to the Project; and (iii) the payment of certain costs of issuance (including costs of bond insurance premium(s), if any) (the project and the payment of costs of issuance, collectively the "Project"); and

WHEREAS, it has been determined that Louisville/Jefferson County Metro Government (the "Issuer") may assist the Company in the financing of the Project by entering into, at the appropriate time, a loan agreement with reference thereto pursuant to the Act, all in furtherance of the purposes of the Act and public benefit to the residents and inhabitants of the Issuer, such loan agreement to be upon such terms and conditions as the Act may require and the Issuer may deem advisable; and

WHEREAS, the Issuer is further authorized by the Act to issue its industrial building revenue bonds (the "Bonds") for the purpose of defraying the cost of financing the Project; discussions have occurred between the Company and the Issuer incident to the issuance of the Bonds by the Issuer; the Issuer has agreed with the Company to issue the Bonds based upon compliance by the Company with certain conditions, requirements, and obligations, and subject to the approval by the Issuer of the terms of all agreements, ordinances, and other documents required incident to the Bond issue; and the Issuer has authorized the Company to proceed with the Project, subject to reimbursement of the initial costs of the Project from the proceeds of the Bonds, when, as, and if issued; and

WHEREAS, based upon an estimate of the costs of the Project, the Issuer proposes to issue the Bonds in an amount that is not expected to exceed \$32,000,000, such Bonds to be sold and delivered by the Issuer to pay the costs of the Project, together with costs incident to the authorization, sale and issuance of the Bonds, but with such contributions from the Company as may be necessary; and

WHEREAS, the Issuer proposes to enter into at the appropriate time a loan agreement with the Company with respect to the Project, whereby the Company will covenant and agree to pay amounts sufficient to provide for the payment of principal of, premium, if any, and interest on the Bonds, together with all trustee's and any paying agent's fees in connection with the Bonds as the same come due and payable; and

WHEREAS, it is deemed necessary and advisable that a Memorandum of Agreement between the Issuer and the Company be executed setting forth the agreements of the parties with respect to the financing of the Project, the issuance of the Bonds to defray the costs thereof, and the payments to be made by the Company with respect to the Project;

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATIVE COUNCIL OF LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT AS FOLLOWS:

Section 1. It is hereby found, determined, and declared that [i] the recitals set forth in the preamble to this Resolution, which are incorporated in this Section by reference, are true and correct; [ii] the total amount of money necessary to be provided by the Issuer for the financing of the Project to be financed by the Bonds is not expected to exceed \$32,000,000; [iii] the Company has represented that it has sufficient financial resources to finance the Project itself and to place it in operation and to continue to operate, maintain, and insure the Project throughout the term of the Bond issue, meeting when due the obligations of the proposed loan agreement; and [iv] sufficient safeguards will be provided by the loan agreement to ensure that all money provided by the Issuer from the proceeds of the sale of the Bonds will be expended by way of direct expenditure or reimbursement, solely and only for the purposes of the Project.

Section 2. It is hereby found, determined, and declared that the financing of the Project will be paid out of the proceeds of the Bonds and such contributions of the Company as may be necessary to complete the Project, as the Project is defined in the loan agreement to be executed by and between the Issuer and the Company at the appropriate time pursuant to the Act; **THAT NONE OF THE BONDS WILL BE GENERAL OBLIGATIONS OF THE ISSUER; THAT NEITHER THE BONDS NOR THE INTEREST THEREON CONSTITUTE OR GIVE RISE TO ANY INDEBTEDNESS OF THE ISSUER OR ANY CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWER; THAT THE BONDS AND THE PAYMENT OF INTEREST THEREON SHALL BE SECURED AND PAYABLE SOLELY AND ONLY BY A PLEDGE OF AMOUNTS TO BE PAID BY THE COMPANY UNDER SUCH LOAN, LEASE OR SALE AGREEMENT; AND THAT NO PART OF SAID PROJECT COSTS WILL BE PAYABLE OUT OF ANY GENERAL FUNDS, REVENUES, ASSETS, PROPERTIES OR OTHER CONTRIBUTIONS OF THE ISSUER.**

Section 3. In order to assure the financing of the Project in the Issuer with the resultant public benefits which will flow therefrom, it is deemed necessary and advisable that the Memorandum of Agreement hereinafter referred to be approved and executed for and on behalf of the Issuer. Accordingly, the Memorandum of Agreement by and between the Company and the Issuer substantially in the form and with the contents set forth in Exhibit A attached hereto and incorporated herein by reference is hereby approved and the Mayor is hereby authorized and directed to execute and deliver said Memorandum of Agreement, and the Metro Council Clerk is hereby authorized and directed to attest same.

Section 4. Inasmuch as the Company is the best judge of its requirements and is familiar with the Project, the Company is hereby authorized to enter into such contracts and undertakings as may be required for the financing of the Project. Reimbursements made to the Company after receipt of the proceeds of the sale of the proposed Bond issue by the Issuer shall be subject to approval or certification by a qualified person to be designated by the Company and approved by the Issuer as specified in the loan agreement to be entered into by the Issuer and the Company at the appropriate time pursuant to the Act.

Section 5. The Company has requested, and the Issuer hereby approves, the employment of Frost Brown Todd LLC as Bond Counsel. Bond Counsel is authorized and directed to take any other legal action necessary or appropriate in connection with the issuance of the Bonds. The County Attorney is authorized and directed to assist Bond Counsel in any appropriate manner.

Section 6. No Issuer funds shall be expended on the Project, except such as are derived from Bond proceeds.

Section 7. In the Memorandum of Agreement, the Company has acknowledged its obligation to pay ad valorem or other property taxes lawfully established by the Issuer, the Jefferson County Board of Education or the fire protection district in which the Project is located (the "Taxes") with respect to the Project.

Section 8. No recourse under or upon any obligation, covenant, acceptance or agreement contained in this Resolution, the Memorandum of Agreement or the Bonds or any related documents, or under any judgment obtained against the Issuer or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, shall be had against any officer as such, past, present, or future, of the Issuer, either directly or through the Issuer, or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to any holder of any Bond, or otherwise, of any sum that may be due and unpaid by the Issuer upon any of the Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, as such, to respond by reason of any act or omission on his or her part, or otherwise, for, directly or indirectly, the payment for or to the Issuer or any receiver thereof, or for or to the owner or any holder of any Bond, or otherwise, of any sum that may remain due and unpaid upon any Bond, shall be deemed to be expressly waived and released as a condition of

and consideration for the execution and delivery of the Memorandum of Agreement and any related documents and the issuance of the Bonds.

Section 9. To the extent any resolution, ordinance or part thereof is in conflict herewith, the provisions of this resolution shall prevail and be given effect.

Section 10. This resolution shall be in full force and effect from and after its adoption as provided by law.

INTRODUCED, SECONDED, READ AND ADOPTED at a duly convened meeting of the Legislative Council of Louisville/Jefferson County Metro Government, held on the _____ day of _____, 2008, on the same occasion signed in open session by the Mayor and President of the Council, attested under seal by the Metro Council Clerk, ordered to be filed and indexed as required by law, and declared to be in full force and effect according to law.

Jerry Abramson
Mayor

Jim King
President of the Council

Date

Approved:

Kathleen J. Herron, Clerk

Date

APPROVED AS TO FORM AND LEGALITY

Irv Maze
Jefferson County Attorney

By: James T. Carey
Assistant County Attorney

CERTIFICATE OF THE CLERK

I, Kathleen J. Herron, Metro Council Clerk, hereby certify that I am the duly qualified and acting Metro Council Clerk of the Louisville/Jefferson County Metro Government, that the foregoing Resolution is a true copy of said Resolution duly adopted by the Metro Council of said Metro Government, signed by the Mayor and President of the Council of said Metro Government, and attested under seal by me as Metro Council Clerk of the Metro Government, at a properly convened term and session of said Metro Council held on _____, 2008, as shown by the official records in my custody and under my control; that attached hereto are true copies of the documents approved therein, and that copies of such documents have also been duly filed and recorded in the official records of the Metro Government.

IN WITNESS WHEREOF, I have hereunder set my hand as Metro Council Clerk of the Louisville/Jefferson County Metro Government and the seal of the Metro Government this ____ day of _____, 2008.

Kathleen J. Herron, Clerk

[SEAL]

EXHIBIT A

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT executed as of _____, 2008, by and between the LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (the "Issuer"), a political subdivision of the Commonwealth of Kentucky, and UNIVERSITY OF LOUISVILLE FOUNDATION, INC., a Kentucky non-profit corporation duly organized and existing under the laws of the Commonwealth of Kentucky (the "Company").

Recitals

A. The Issuer is authorized by the Industrial Buildings for Cities and Counties Act (the "Act"), KRS 103.210 et seq., to issue revenue bonds and use the proceeds thereof to finance the costs of acquisition of industrial facilities for use in the industrial operation of a private business enterprise, in order to accomplish the public purposes of promoting the economic development of the Commonwealth of Kentucky (the "Commonwealth"), relieving conditions of unemployment, and encouraging the increase of industry therein.

B. The Company, as borrower, has applied to the Issuer for the issuance of industrial building revenue bonds (the "Bonds") of the Issuer, in order to finance (i) the financing for the development and construction of a contemporary art museum within an approximately 20,000 square foot condominium unit as a component of Museum Plaza, a mixed-use project to be constructed consisting of full service hotel, office space, residential condominiums, retail outlets and parking garage with city plaza and park in downtown Louisville, Kentucky, (the "project"); (ii) the reimbursement to the Company for costs already incurred and paid with respect to the Project; and (iii) the payment of certain costs of issuance (including costs of bond insurance premium(s), if any) (the project and the payment of costs of issuance, collectively the "Project").

C. The Legislative Council of the Issuer has found and determined that the Project will tend to accomplish the public purposes of the Act by promoting the economic development of the Commonwealth, relieving conditions of unemployment, and encouraging the increase of industry therein.

D. The Issuer proposes to issue the Bonds to finance the cost of the Project and desires to authorize the Company to proceed with the Project and to be reimbursed out of the proceeds of the Bonds for any costs of the Project incurred prior to the issuance of the Bonds.

E. The Issuer proposes to enter into a loan agreement with the Company relating to the Project and the Bonds, whereby the Company will agree to make payments to the Issuer sufficient to provide for the payment of the principal of, premium, if any, and interest on the Bonds and all other costs of the Issuer incurred in connection with the Bonds and the Project.

Section 1. Representations and Undertakings of the Company. The Company represents, undertakes, covenants, and agrees as follows:

A. The Company intends to use the Project at all times during the term of the aforementioned loan agreement or the sooner termination of such loan agreement, for the purposes hereinbefore indicated.

B. The Company will cause contracts to be entered into for, or will otherwise provide for, the development and construction of the Project.

C. Prior to or contemporaneously with the delivery of any Bonds, the Company will enter into the loan agreement with the Issuer under the terms of which the Company will obligate itself to [i] undertake and complete the development and construction of the Project, and [ii] to pay to the Issuer amounts sufficient in the aggregate to pay the principal of, interest on, and premium, if any, on the Bonds, as and when the Bonds shall become due and payable, such loan agreement to contain such other provisions as shall be agreed upon by the Issuer and Company.

D. The Company will protect and hold harmless the Issuer, all members of the Legislative Council of the Issuer, and all of the Issuer's officers, employees, and agents from all expense and liability arising from or in connection with the Project and the Bonds.

E. The Company will take such further action and adopt such further proceedings as may be requested to implement its aforesaid undertakings or as it may deem appropriate in pursuance thereof.

Section 2. Undertakings of the Issuer. Subject to the fulfillment of the several conditions herein stated, the Issuer agrees as follows:

A. It will from time to time authorize or cause to be authorized the issuance and sale of the Bonds pursuant to the terms of the Act as then in force in an aggregate principal amount that is not expected to exceed \$32,000,000.

B. It will adopt or cause to be adopted such proceedings and authorize the execution of such documents as may be necessary or acceptable for [i] the authorization, issuance, and sale of the Bonds upon a negotiated basis, [ii] the development and construction of the Project, and [iii] the loan agreement relating to the Project and the Bonds, all as shall be authorized by law and upon terms which shall be mutually satisfactory to the Issuer and the Company.

C. The aggregate payments stipulated under the loan agreement shall be sufficient (in addition to the covenants of the Company to properly maintain and insure the Project) to pay the principal of, interest on and premium, if any, on all Bonds as and when the same become due and payable and to pay all other costs associated therewith.

D. It will take or cause to be taken such other acts and adopt such further proceedings as may be required to implement the aforesaid undertakings as it may deem appropriate.

Section 3. General Provisions.

A. The law firm of Frost Brown Todd LLC, Louisville, Kentucky, is hereby designated as bond counsel in connection with the authorization, issuance and sale of the Bonds.

B. All commitments of the Issuer and the Company pursuant to this Memorandum of Agreement are subject to the condition that on or before one year from the date hereof (or such other date as shall be mutually satisfactory to the Issuer and the Company) the Issuer and the Company shall have agreed to mutually acceptable terms and conditions with respect to the aforementioned loan agreement and all other documents required in connection with the Bonds and the Project.

C. This Memorandum of Agreement, and the Resolution approving it, constitute the present intent of the Issuer to issue the aforementioned Bonds at a later date.

D. IT IS UNDERSTOOD AND AGREED THAT THE BONDS, WHEN AND IF ISSUED, SHALL NEVER BE A GENERAL OBLIGATION OF THE ISSUER BUT A SPECIAL LIMITED OBLIGATION PAYABLE SOLELY IN THE AMOUNTS PAYABLE UNDER A LOAN AGREEMENT AND OTHER REVENUES OF THE PROJECT. NEITHER THE ISSUER, THE COMMONWEALTH OF KENTUCKY, NOR ANY POLITICAL SUBDIVISION OF THE COMMONWEALTH OF KENTUCKY SHALL BE OBLIGATED TO PAY THE PRINCIPAL OR INTEREST ON SUCH BONDS OR OTHER COSTS INCIDENT THERETO.

E. It is further understood and agreed that no recourse under or upon any obligation, covenant, acceptance or agreement contained in this Memorandum of Agreement, the Resolution or the Bonds or any related documents, or under any judgment obtained against the Issuer or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise, or under any circumstances, shall be had against any officer as such, past, present, or future, of the Issuer, either directly or through the Issuer, or otherwise, for the payment for or to the Issuer or any receiver thereof, or for or to any holder of any Bond, or otherwise, of any sum that may be due and unpaid by the Issuer upon any of the Bonds. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such officer, as such, to respond by reason of any act or omission on his or her part, or otherwise, for, directly or indirectly, the payment for or to the Issuer or any receiver thereof, or for or to the owner or any holder of any Bond, or otherwise, of any sum that may remain due and unpaid upon any Bond, shall be deemed to be expressly waived and released as a condition of and consideration for the execution and delivery of this Memorandum of Agreement and any related documents and the issuance of the Bonds.

IN WITNESS WHEREOF, the parties hereto have entered into this Memorandum of Agreement by their officers thereunto duly authorized on the day and year first above written.

LOUISVILLE/JEFFERSON COUNTY METRO
GOVERNMENT

By _____
Jerry Abramson
Mayor

[SEAL]

ATTEST:

Kathleen J. Herron, Metro Council Clerk

APPROVED AS TO FORM AND LEGALITY
Irv Maze, County Attorney

By _____
James T. Carey,
Assistant County Attorney

UNIVERSITY OF LOUISVILLE FOUNDATION,
INC.

By _____
Name: _____
Title: _____